

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ALASKA
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4 MONIQUE R. SNEAD, Individually,
5 and as Personal Representative of the
6 Estate of John H. Snead; *et al.*,

7 Plaintiffs,

8 vs.

9 GUADALUPE C. WRIGHT; *et al.*,

10 Defendants.
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Case No. 3:19-cv-00092-JWS
3:19-cv-00209-JWS
CONSOLIDATED

ORDER

13 **I. MOTION PRESENTED**
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15 At docket 136, Defendant Guadalupe C. Wright (“Wright”) filed a
16 motion to exclude the proposed expert testimony of Sheila Shinn, an expert on issues
17 relating to diminished capacity and undue influence put forth by Plaintiffs Monique R.
18 Snead and John G. Snead (“Plaintiffs”). Plaintiffs filed an opposition at docket 140.
19 Wright filed a reply at docket 146. Oral argument would not be of assistance to the
20 court.
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22 **II. BACKGROUND**
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24 This federal action involves a dispute related to certain Merrill Lynch
25 accounts held by John H. Snead (“Snead”), the father of Plaintiffs, who died in August
26 2017. Plaintiffs allege that Wright, who had been in a long-term relationship with
27 Snead up through his death and an employee of Merrill Lynch, “exerted undue
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1 influence, wrongfully facilitated, and/or otherwise deceived John H. Snead” in order
2 to obtain funds from Snead’s trust accounts and make herself the beneficiary of his
3 annuity. Their claims against her include conversion, fraud, and malpractice. Wright
4 moves to exclude all testimony from Sheila Shinn (“Shinn”), who proposes to offer an
5 opinion as to Snead’s diminished capacity and Wright’s use of undue influence to
6 secure his assets. Wright argues that Shinn is not qualified to render an expert opinion
7 on diminished capacity, and her expert report and deposition testimony “are rife with
8 inflammatory allegations, wild speculation and adversarial opinions” and therefore
9 unreliable for purposes of Rule 702 of the Federal Rules of Civil Procedure or
10 otherwise excludable as unhelpful, misleading, and likely to cause juror confusion and
11 undue prejudice against her.¹

12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 **III. LEGAL STANDARDS**

Federal Rule of Evidence 702 permits a witness qualified by
“knowledge, skill, experience, training, or education” to offer expert testimony where:
(1) the testimony will help the trier of fact understand the evidence or determine a fact
in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the
product of reliable principles and methods; and (4) the expert has reliably applied the
principles and methods to the facts of the case.² This rule helps the court perform its
mandatory gatekeeping function to “assure that the expert testimony ‘both rests on a

¹ [Docket 136-1 at 3–5.](#)

² [Fed. R. Evid. 702.](#)

1 reliable foundation and is relevant to the task at hand.’’³ “[T]estimony is relevant if
2 the knowledge underlying it has a valid connection to the pertinent inquiry.”⁴
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4 Testimony is reliable if it is rooted in the “knowledge and experience of the relevant
5 discipline.”⁵ The court’s role in analyzing reliability “is to analyze not what the
6 experts say, but what basis they have for saying it.”⁶ That is, reliability is not to be
7 conflated with credibility. “Shaky but admissible evidence is to be attacked by cross
8 examination, contrary evidence, and attention to the burden of proof, not exclusion.”⁷
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10 The court must act as gatekeeper for both scientific and non-scientific
11 expert testimony, although it has flexibility in structuring how it determines whether
12 expert testimony is reliable and relevant.⁸ For non-scientific expert opinions,
13 reliability often cannot be measured by examining the supporting theories and
14 methodologies, including issues of testing, error rates, and peer review publication.⁹
15 A court may or may not consider any specific reliability factor depending on the type
16 of expertise and particular subject of the testimony.¹⁰ Indeed, a court can find non-
17 scientific testimony reliable based merely on the knowledge and experience of the
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22 ³ *Primiano v. Cook*, 598 F.3d 558, 564 (9th Cir. 2010) (quoting *Daubert v. Merrell Dow*
23 *Pharm., Inc.*, 509 U.S. 579, 597 (1993)).

24 ⁴ *Id.* at 565 (quoting *United States v. Sandoval-Mendoza*, 472 F.3d 645, 654 (9th Cir. 2006)).

25 ⁵ *Id.*

26 ⁶ *Wendell v. GlaxcoSmithKline LLC*, 858 F.3d 1227, 1232 (9th Cir. 2017) (quoting *Daubert*
27 *v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1316 (9th Cir. 1995)).

28 ⁷ *Primiano*, 598 F.3d at 564.

⁸ *United States v. Valencia-Lopez*, 971 F.3d 891, 898 (9th Cir. 2020).

⁹ *Primiano*, 598 F.3d at 564; *Hangarter v. Provident Life & Accident Ins. Co.*, 373 F.3d 998,
1017 (9th Cir. 2004).

¹⁰ *Primiano*, 598 F.3d at 564 (“[T]he trial court has discretion to decide how to test an expert’s
reliability as well as whether the testimony is reliable, based on ‘the particular circumstances of the
particular case.’” (quoting *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999))).

1 expert.¹¹ Exclusion of expert testimony should be “the exception rather than the
2 rule.”¹²

3 4 IV. DISCUSSION

5 A. Capacity

6 Plaintiffs retained Shinn as an expert in gerontology, which includes the
7 social issues surrounding aging, and had her analyze Snead’s mental capacity around
8 the time of his death.¹³ In her report, Shinn concludes that Snead “experienced
9 diminished capacity given the severity of his ailments, specifically heart failure.”¹⁴
10 She describes his condition as “vascular dementia.”¹⁵ Wright argues that Shinn is not
11 qualified to put forth an opinion on Snead’s mental capacity, particularly given that
12 her opinion is based only on review of his medical records and medical literature
13 linking heart failure to cognitive impairment, with no direct evaluation of Snead
14 himself.
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18 Shinn has over twenty years of experience working in the field of
19 gerontology—which studies aging from a social perspective rather than a physical
20 perspective—with a master’s degree in the topic as well as a master’s in public health.
21 She has been a certified dementia practitioner since 2017, with recent experience as a
22 contractor with the State of Alaska Office of Public Advocacy and the Alaska Court
23 System in the role of court visitor on matters related to guardianship and
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26 ¹¹ [Hangarter, 373 F.3d at 1017.](#)

27 ¹² [Fed. R. Evid. 702](#) advisory committee’s note to 2000 amendment.

28 ¹³ [Docket 136-2 at 3](#); [Docket 136-3 at 3](#).

¹⁴ [Docket 136-2 at 7](#).

¹⁵ [Id.](#) at 8.

1 conservatorship. She testified that as a certified dementia practitioner she is trained to
2 recognize diminished capacity in the elderly and that she works closely with people
3 who “have had some kind of cognitive impairment.”¹⁶ She has a long history of
4 teaching and developing programs on issues related to elder care and elder fraud.
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6 Despite her experience and training on issues related to aging, elder care,
7 and elder abuse, the court agrees with Wright that Shinn’s testimony about Snead’s
8 metal capacity should be excluded under Rule 702 as outside her expertise or otherwise
9 not helpful to the jury. Shinn acknowledged in her deposition that Snead’s medical
10 records did not mention any mental status exams or cognitive assessments that
11 suggested dementia or diminished mental capacity.¹⁷ Unlike her experience in state
12 court where she conducts in-person assessments and investigations of the person who
13 is the subject of the guardianship or conservatorship, she was not able to make any in-
14 person assessment of Snead.¹⁸ She instead relied on Snead’s medical records that
15 showed he suffered from heart failure, along with other comorbidities, and that he
16 reported grogginess and some confusion. Then based on medical literature linking
17 heart failure to vascular dementia she concluded Snead had diminished mental capacity
18 at the time of his death.¹⁹ While Shinn has expertise in the field of aging, including
19 working with people suffering from dementia and being able to recognize the signs of
20 dementia or diminished capacity, her experience and training does not sufficiently
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27 ¹⁶ [Docket 136-3 at 61.](#)

28 ¹⁷ [Id. at 33.](#)

¹⁸ [Id. at 67.](#)

¹⁹ [Docket 136-2 at 7–8.](#)

1 extend to diagnosing such conditions based upon medical records and reviewing
2 medical literature.

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4 Moreover, her opinion will be of little assistance to the jury on this issue.
5 As acknowledged in her deposition testimony, her opinion is not necessarily based on
6 specialized knowledge: “I’m not a medical doctor, but I can read . . . and can
7 understand medical records.”²⁰ She admitted that, unlike her usual work, here she was
8 “really relying on hearsay and medical records to determine his state of mind.”²¹ She
9 could not say Snead was “incapacitated.” Rather, she could only confidently say that
10 based on his medical conditions he did not have “a hundred percent full brain
11 capacity.”²² This is not an opinion formed from specialized knowledge that would be
12 of assistance to the jury on the issue of Snead’s capacity.²³ Indeed, Plaintiffs have a
13 medical expert, Gregory T. Whitman, MD, to testify about Snead’s health conditions
14 and how they would have affected his capacity to understand certain events taking
15 place in the time preceding his death.²⁴ Consequently, the issue of capacity is a fact to
16 be determined by the jurors following Plaintiffs’ presentation of evidence and other
17 expert testimony, and Shinn’s opinion would not add any specialized information to
18 that determination.
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25 ²⁰ Docket 136-3 at 32.

26 ²¹ *Id.* at 67.

27 ²² *Id.*

28 ²³ *Mukhtar v. Cal. State Univ., Hayward*, 299 F.3d 1053, 1065 n.9 (9th Cir. 2002) (noting that to be admissible as helpful to the jury, the expert must provide testimony about an issue that is “beyond the common knowledge of the average layman” (quoting *United States v. Vallejo*, 237 F.3d 1008, 1019 (9th Cir.), amended by 246 F.3d 1150 (9th Cir. 2001))).

²⁴ Docket 140-1.

1 **B. Undue Influence**

2 Wright asserts that Shinn's expert testimony regarding the undue
3 influence Wright exerted on Snead should be excluded in full as unreliable. She argues
4 that Shinn's opinions as articulated in her report and in her deposition testimony are
5 based upon speculation and inferences not supported in the record. She asserts that
6 Shinn improperly comments on Wright's credibility and motives, which invades the
7 province of the jury, and otherwise makes conclusions on areas outside her expertise
8 in a manner that would be prejudicial to Wright and confusing to the jury.
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10 After due consideration of Wright's argument and Shinn's report and
11 deposition, the court cannot deem her opinions entirely unreliable to the extent that she
12 should be outright prohibited from testifying under Rule 702. Shinn has a sufficient
13 foundation of knowledge and experience to serve as an expert on undue influence over
14 the elderly. As noted in her report, she is knowledgeable about what undue influence
15 is and how to identify when it is occurring or at risk of occurring. She also is
16 knowledgeable as to the methods used by experts in the field of gerontology to look
17 for manipulation of the elderly:
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22 For purposes of this report, I am using the IDEAL protocol
23 developed by Dr. Bennett Blum and the Bernatz SCAM
24 Model. The IDEAL protocol combines knowledge from
25 the fields of psychiatry, psychology, and sociology
26 regarding the mechanism of human manipulation. Factors
27 in the IDEAL protocol are Isolation, Dependency,
28 Emotional Manipulation, and/or Exploitations of a
vulnerability; Acquiescence; and Loss. The SCAM model,
developed by Susan I. Bernatz, PhD., builds upon the
IDEAL protocol but includes factors that contribute to
susceptibility. Elements of the SCAM model include

1 Susceptibility, Confidential [R]elationship, Active
2 Procurement, and Monetary Loss. . . . Common signs of
3 vulnerability include but are not limited to being
4 physically disabled, experiencing comorbidities,
5 dependency on a caregiver for all activities of daily living,
6 lacking mobility and no longer driving, and being
7 homebound and/or socially isolated.²⁵

8 Given the models cited, her opinion on whether Wright exerted undue influence on
9 Snead before his death is based upon accepted methods in the field. She applied these
10 models to the facts as presented to her through discovery. Her testimony related to the
11 field of elder care and undue influence is specialized knowledge that will assist the
12 trier of fact. Consequently, Shinn’s testimony about how undue influence is identified
13 in the field of gerontology and what facts in this case suggest undue influence was
14 occurring is admissible expert testimony under Rule 702.

15 Wright points to various opinions and conclusions in the report that she
16 asserts are based on speculation and a selective version of the facts presented in
17 discovery. She argues that the report is rife with such conclusions and therefore should
18 be deemed unreliable. The fact that Shinn’s testimony may be susceptible to
19 impeachment based on erroneous facts or incomplete consideration of the evidence
20 does not require wholesale exclusion of Shinn as an expert at trial. Questions or
21 disagreements about the facts supporting her opinion reflect on credibility, not
22 admissibility.²⁶ The court cannot conclude that her opinions are wholly speculative.

25 [Docket 136-2 at 9.](#)

26 [Elosu v. Middle Fork Ranch Inc.](#), 26 F.4th 1017, 1023–24 (9th Cir. 2022).

1 The court’s rejection of Wright’s request to outright exclude Shinn from
2 testifying should not be read as a finding that her entire report is above reproach.
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4 Plaintiffs may not introduce Shinn for the purpose of reinforcing their factual narrative
5 or providing a synopsis of their evidence for the jury.²⁷ Her testimony must be
6 provided in the context of how experts in her field of gerontology look for undue
7 influence. Moreover, Plaintiffs’ counsel should caution Shinn against offering her
8 opinion about other witnesses’ credibility. For example, in her report Shinn concludes
9 that Wright was lying about when her relationship with Snead began and about the fact
10 that she did not have a romantic relationship with Chris Olsen, the man who was
11 negotiating to purchase Snead’s business and who was made Snead’s power of attorney
12 and health care agent shortly before Snead’s death. This type of opinion is improper:
13 “An expert witness is not permitted to testify specifically to a witness’ credibility.”²⁸
14 Determining witness credibility is an exclusive function of the jury.²⁹ That does not
15 mean, however, that she is foreclosed from offering her opinion based on a set of facts
16 she assumes to be credible or evidence that conflicts with Wright’s testimony.³⁰ She
17 simply cannot offer an opinion or make a comment to the jury regarding Wright’s
18 truthfulness.
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25 ²⁷ *Johns v. Bayer Corp.*, No. 09-cv-1935, 2013 WL 1498965, at *28 (S.D. Cal. Apr. 10, 2013).

26 ²⁸ *Reed v. Lieurance*, 863 F.3d 1196, 1209 (9th Cir. 2017) (quoting *United States v. Candoli*,
27 870 F.2d 496, 506 (9th Cir. 1989)).

28 ²⁹ *United States v. Ramirez-Rodriguez*, 552 F.2d 883, 884 (9th Cir. 1977); *Candoli*, 870 F.2d
29 at 506.

30 ³⁰ See *Reed*, 863 F.3d at 1209; see also *Ellis v. Navarro*, No. C-07-5126-SBA, 2012 WL
31 3580284, at * 6 (N.D. Cal. Aug. 17, 2012).

1 Additionally, Shinn must be instructed to refrain from giving any
2 testimony that speculates as to motive or intent.³¹ For example, in her report where
3 she discusses the presence of manipulation, she references an email between Wright
4 and Chris Olsen wherein Wright mentions that an attorney for the Snead family
5 questioned whether Wright was being manipulative.³² Shinn discusses the content of
6 the email and then goes further to conclude that Wright was “over-explaining” herself
7 to perhaps cover up that she had been eavesdropping.³³ Such a statement is speculative
8 as to Wright’s motive and state of mind. Testimony of this nature is not appropriate
9 expert testimony and will be subject to objection and exclusion at trial.
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12 To the extent Wright requests that this court parse through Shinn’s report
13 and identify other statements that improperly speculate as to motive and intent, the
14 court declines to do so. Her “report is not evidence and, because the objectionable
15 character of some of [her] statements may simply be due to injudicious phrasing, a pre-
16 trial ruling on the admissibility of [her] testimony is premature.”³⁴ “There is nothing
17 prejudicial to a party in reserving a ruling on the admission of opinions and conclusions
18 of an expert until offered at trial when all of the necessary foundation must be proved
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26 ³¹ See, e.g., *Siring v. Oregon State Bd. of Higher Educ. ex rel. E. Oregon Univ.*, 927 F. Supp.
27 2d 1069, 1077–78 (D. Oregon 2013).

28 ³² Docket 136-2 at 15.

³³ *Id.*

³⁴ *Madrigal v. Allstate Indem. Co.*, CV-14-4242-SS, 2015 WL 12746232, at *5 (C.D. Cal.
Oct. 29, 2015).

1 and the adequacy of the showing made will be determined before questions asking for
2 opinions and conclusions will be permitted.”³⁵

3 4 V. CONCLUSION

5 Based on the preceding discussion, Wright’s motion to exclude the
6 proposed expert testimony of Sheila Shinn at docket 136 is GRANTED IN PART AND
7 DENIED IN PART. For the reasons discussed above, the court prohibits Sheila Shinn
8 from offering her expert opinion as to John H. Snead’s diminished capacity. She may,
9 however, testify as an expert on the subject of undue influence and its application to
10 this case. Nothing in this order should be deemed a ruling on the admissibility of any
11 specific statement contained in her report, and the court reserves the right to exclude
12 her testimony in the course of trial that exceeds the proper scope of her expertise or is
13 shown to be irrelevant or otherwise inadmissible based on the evidence as presented at
14 trial.
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18 IT IS SO ORDERED this 19th day of September, 2022, at Anchorage,
19 Alaska.
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21 /s/ John W. Sedwick
22 JOHN W. SEDWICK
23 Senior United States District Judge
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28 ³⁵ *Morford v. Wal-Mart Stores, Inc.*, 2:09-cv-02251-RLH, 2011 WL 2313648, at *8 (D. Nev. June 9, 2011) (citing *United States v. Alatorre*, 222 F.3d 1098, 1103 (9th Cir. 2000)).